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7   UNITED STATES DISTRICT COURT

8   CENTRAL DISTRICT OF CALIFORNIA

9 ALMONT AMBULATORY SURGERY   Case No. 2:14-CV-03053-MWF (VBKx)
   CENTER, LLC, a California limited
10 liability company, et al.,
                                      ~~[PROPOSED]~~ ORDER
11   Plaintiffs,   REGARDING ELECTRONICALLY
                                      STORED INFORMATION (ESI)
12   vs.   DISCOVERY PLAN

13 UNITEDHEALTH GROUP, INC.; et al., Judge: Hon. Michael W. Fitzgerald
                      Defendants.
14   Magistrate Judge: Hon. Victor B. Kenton

15 UNITED HEALTHCARE SERVICES,   Trial Date: None Set
   INC.; et al.,   Complaint Filed: March 21, 2014
16

17   Counterclaim Plaintiffs

18 v.

19 ALMONT AMBULATORY SURGERY
   CENTER, LLC, a California limited
20 liability company; et al.,

21   Counterclaim Defendants.

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23   The above-referenced matter came before the undersigned United States

24 Magistrate Judge upon the Parties' efforts to develop a protocol for the preservation

25 and production of electronically stored information ("ESI"). The Court, upon the

26 stipulation submitted by the Parties, now makes and enters the following Order.

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1   IT IS HEREBY ORDERED that, pursuant to Rules 26 and 34 of the Federal

2 Rules of Civil Procedure, all Parties in the above-referenced matter must comply with

3 the following obligations in this litigation:

4 **I.   GENERAL PROVISIONS**

5   A.   Absent special circumstances, the specifications set forth below shall

6 govern the production of all documents, testimony, exhibits, ESI, and any other

7 materials and information (including, to avoid any ambiguity, any copies, summaries,

8 or derivations thereof) produced by the Parties during discovery in the Action.

9   B.   Nothing in this Protocol – nor the production of any documents pursuant

10 to this Protocol – is intended to waive any Party's rights with respect to any attorney-

11 client, work product or other applicable privilege, all of which are preserved.

12   C.   All documents produced hereunder shall be governed by the terms of the

13 Protective Order entered in this action and any other applicable orders entered by the

14 Court in this action.

15 **II.   PRODUCTION OF HARD COPY DOCUMENTS**

16   A.   <u>TIFFs</u>. Documents should be produced in the form of single-page, black

17 and white, Group IV TIFFs format image files. Each TIFF image should be named as

18 its corresponding Bates number. Original document orientation should be maintained

19 (i.e., portrait to portrait and landscape to landscape). Bates numbers, confidentiality

20 designations, and redactions should be burned into the TIFF image files. TIFF image

21 files should be provided in a self-identified "Images" folder.

22   B.   <u>OCR Text Files</u>. Optical Character Recognition ("OCR") text files shall

23 be provided as a single text tile for each document, not one text file per page. Each file

24 should be named with the beginning Bates number that is assigned to its corresponding

25 document, followed by .txt. OCR text tiles should be provided in a self-identified

26 "Text" directory. To the extent a document is redacted, OCR text files for such a

27 document shall not contain text for redacted portions.

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2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

C.   Database Load Files/Cross-Reference Files. Documents should be provided with Concordance-compatible image and data load tiles (i.e., .OPT and .DAT files) using standard Concordance delimiters. Concordance-compatible image and data load files (i.e., .OPT and .DAT files) should be provided in a self-identified "Data" folder.

D.   Coding Fields. Absent special circumstances, documents should be produced with at least the following searchable information in accompanying delimited data files: (1) BegBates; (2) EndBates; (3) BegAttach; (4) EndAttach; and (5) Custodian. Custodians should be identified using the convention "last name_first name." Entity/departmental custodians should be identified with a description of the entity or department. A producing party shall use a uniform description of a particular custodian across productions.

E.   Bates Numbering. Each TIFF image should be assigned a Bates number that: (1) is unique across the entire document production; (2) maintains a constant length across the entire production (i.e., padded to the same number of characters); (3) contains no special characters or embedded spaces; and (4) is sequential within a given document. If a Bates number or set of Bates numbers is skipped in a production, the producing party will so note in a cover letter or production log accompanying the production.

III.   PRODUCTION OF ESI

A.   TIFFs. Documents should be produced in the form of single-page, black and white, Group IV TIFFs format image files. Each TIFF image should be named as its corresponding Bates number. Original document orientation should be maintained (i.e., portrait to portrait and landscape to landscape). Bates numbers, confidentiality designations, and redactions should be burned into the TIFF image files. TIFF image files should be provided in a self-identified "Images" folder.

B.   Metadata Fields and Processing. Absent special circumstances, each of the metadata and coding fields set forth in Appendix 1 that can be extracted from a

1   document shall be produced for that document, to the extent already in existence and

2   reasonably accessible. To the extent that metadata does not exist, is not reasonably

3   accessible or available, or would be unduly burdensome to collect, nothing in this ESI

4   Protocol shall require any Party to extract, capture, collect or produce such data. The

5   Parties are not obligated to populate manually any of the fields in Appendix 1 if such

6   fields cannot be extracted from a document, with the exception of the following: (1)

7   BegBates; (2) EndBates; (3) BegAttach; (4) EndAttach; (5) Custodian; and (6)

8   NativeLink fields (which may be populated by the party or the party's vendor).

9   C.   Extracted Text Files. For each document, an extracted text file, created

10 using the extracted full text, should be provided along with its corresponding TIFF

11 image file(s) and metadata. The file name of each extracted text file should be

12 identical to that of the first image page of its corresponding document, followed by

13 .txt. File names should not contain any special characters or embedded spaces. The

14 text of native files should be extracted directly from the native file. However, if a

15 document has been redacted, OCR of the redacted document will suffice in lieu of

16 extracted text.

17   D.   Database Load Files/Cross-Reference Files. Documents should be

18 provided with Concordance-compatible image and data load files (i.e., .OPT and .DAT

19 files) using standard Concordance delimiters. Concordance-compatible image and

20 data load files (i.e., .OPT and .DAT files) should be provided in a self-identified

21 "Data" folder.

22   E.   Native Files. Absent special circumstances, MS Excel files, .CSV files,

23 MS Access, Quickbooks and other similar spreadsheet files shall be produced in native

24 format ("Native Files"). Native Files should be provided in a self-identified "Natives"

25 directory. Each Native File should be produced with a corresponding single-page

26 TIFF placeholder image, which will contain language indicating that the document is

27 being produced as a Native File. Native Files should be named with the beginning

28 Bates number that is assigned to that specific record in the production. A

"NativeLink" entry for each spreadsheet should be included in the .DAT load file indicating the relative file path to each Native File on the production media. Native Files should be produced with extracted text and applicable metadata fields as set forth in Appendix 1. For documents that contain redacted text, the Parties may either apply the redactions directly on the Native File itself or produce TIFF image files with burned in redactions in lieu of a Native File and TIFF placeholder image. Each producing party will make reasonable efforts to ensure that its discovery vendor, prior to conversion to TIFF, reveals hidden data from redacted Native Files that are produced as TIFF image files and will be formatted so as to be readable. (For example, column widths should be formatted so that numbers do not appear as "###########.") Under these circumstances, all single-page TIFF images shall include row and column headings.

For documents whose native format is PowerPoint, the original native files and single page black and white Group IV TIFF format image files shall be produced.

F.   Structured Data. To the extent responding to a discovery request requires production of ESI contained in a database, the producing party may comply with the discovery request by querying the database for discoverable information and generating a report in a reasonably usable and exportable electronic format (for example, in Excel or .csv format). The first line of each such file will, to the extent possible, show the column headers for each field of data included. The Parties shall meet and confer as needed to finalize the appropriate data extraction and production format for specific information contained in particular databases.

G.   Requests for Other Native Files. Other than as specifically set forth above, a producing party need not produce documents in native format. If good cause exists for the receiving party to request production of certain documents in native format, the receiving party may request production in native format by providing: (1) a list of the Bates numbers of documents it requests to be produced in native format; and (2) an explanation of the need for reviewing such documents in native format.

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

1   Each document produced in response to such requests shall be produced with a

2   "NativeLink" entry in the .DAT load file indicating the relative file path to each Native

3   File on the production media, and all extracted text and applicable metadata fields set

4   forth in Appendix 1. No request may be made for the production of structured data

5   that is the subject of Section H (above) in native format.

6   H.   <u>Color</u>. Documents containing color need not be produced in color in the

7   first instance. However, if good cause exists for the receiving party to request

8   production of certain documents in color, the receiving party may request production

9   of such documents in color by providing: (1) a list of the Bates numbers of documents

10 it requests to be produced in color format; and (2) an explanation of the need for

11 production in color format. The producing party shall not unreasonably deny such

12 requests, but need not make such production until the Parties reach agreement

13 regarding the additional costs associated with the production of documents in color.

14   Documents produced in color shall be produced as JPEG images with Exif

15 compression, 200 dpi or higher and 24-bit color depth. Each color document image

16 file shall be named with the unique Bates number of the first page of the document in

17 question followed by the file extension "JPG."

18   I.   <u>De-duplication</u>. The Parties shall make reasonable efforts to deduplicate

19 ESI. ESI may be deduplicated vertically within each custodian or horizontally across

20 custodians. ESI will be considered duplicative if it has the same content excluding

21 metadata. For example, duplicates would include copies of the same electronic file

22 saved on the local hard drives and/or network shared drives of multiple custodians,

23 even if different instances of the file reflect different dates created. Documents with

24 the same content but different metadata can also be identified through the use of near-

25 duplication technology, provided that only documents identified by such technology

26 are 100% near-duplicates shall be considered duplicates for purposes of this paragraph.

27   J.   <u>Document Families</u>. The terms "parent," "child," or "family" have the

28 meaning conventionally applied in the context of e-discovery. If a parent document is

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

1   responsive to a discovery request, then all family members of that document will also
2   be deemed responsive and will be produced unless otherwise privileged or exempt
3   from production. To the extent any document in such a family is excluded from
4   production, a slip-sheet shall be included in lieu of the document noting the reason for
5   excluding the document from the production. If a child document is responsive but the
6   parent document is not, the child document will be produced but the party is not
7   obligated to produce the parent document or other child documents in the same family
8   unless those documents are also responsive. Parent and child relationships shall be
9   preserved in that child documents will be sequentially Bates numbered following the
10 respective parent documents.

11   K.   Email Threads. Where multiple email messages are part of a single
12 "thread," a Party is only required to produce the most inclusive message and need not
13 produce earlier, less inclusive email messages that are fully contained, including
14 attachments, within the most inclusive email message. For the avoidance of doubt,
15 only email messages for which the parent document and all attachments are contained
16 in the more inclusive email message will be considered less inclusive email messages
17 that need not be produced; if the later message contains different text (such as where
18 the later message adds in-line comments to the body of the earlier message), or does
19 not include an attachment that was part of the earlier message, the earlier message
20 must be produced. Where an email thread is withheld from production under a claim
21 of privilege, the Party's privilege log should reflect only the most inclusive message.

22   L.   Preservation of Potentially Relevant Information. Each Party shall be
23 responsible for taking reasonable and proportional steps to preserve potentially
24 relevant documents and ESI within its possession, custody, or control.

25 **IV.   ENCRYPTION**

26   To maximize the security of information in transit, any media on which
27 documents are produced may be encrypted by the producing party. In such cases, the

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1   producing party shall transmit the encryption key or password to the requesting party,

2   under separate cover, contemporaneously with sending the encrypted media.

3   **V.   PROCESSING OF THIRD-PARTY DOCUMENTS**

4   A.   A Party that issues a non-party subpoena ("Issuing Party") shall include a

5   copy of this ESI Protocol with the subpoena and request that the non-party produce

6   documents in accordance with the specifications set forth herein.

7   B.   The Issuing Party is responsible for producing to all other Parties any

8   documents obtained pursuant to a subpoena to any non-party. To the extent practical

9   given the data volume, productions by a non-party should be produced by the Issuing

10   Party to all other Parties within seven days of the non-party's production to the Issuing

11   Party.

12   C.   Nothing in this ESI Protocol is intended to or should be interpreted as

13   narrowing, expanding, or otherwise affecting the rights of the Parties or third parties to

14   object to a subpoena.

15   **VI.   MISCELLANEOUS PROVISIONS**

16   A.   Nothing in this ESI Protocol shall be interpreted to require disclosure of

17   information protected by the attorney-client privilege, work-product doctrine, or any

18   other applicable privilege or immunity. The Parties do not waive any objections as to

19   the production, discoverability, admissibility, or confidentiality of documents. All

20   productions are subject to the Protective Order entered by the Court in this Action.

21   B.   Pursuant to Federal Rule of Evidence 502(d), the inadvertent production

22   of any Discovery Materials that would be protected from disclosure pursuant to the

23   attorney-client privilege; the work product doctrine; state or federal law, rule, or

24   regulation; confidentiality requirements; agreement of the Parties; or any other

25   applicable privilege or doctrine will not constitute a waiver of the applicable privilege,

26   agreement, or doctrine. If any such Discovery Materials are inadvertently produced,

27   the Parties shall follow the procedure set forth in the Stipulated Protective Order

28   entered in this matter.

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

C.   This Protocol does not address, limit, or determine the relevance, discoverability, agreement to produce, or admission into evidence of ESI. The Parties are not waiving the right to seek any discovery and are not waiving any objections to any discovery requests.

D.   The Parties shall make good faith efforts to comply with and resolve any differences concerning compliance with this ESI Protocol. If a producing party, notwithstanding their good faith efforts, cannot comply with any material aspect of this ESI Protocol or if compliance with such material aspect would be unreasonable, a reasonable time before the date of production, such party shall inform the requesting party in writing as to why compliance with the ESI Protocol is impossible or unreasonable. No party may seek relief from the Court concerning compliance with the ESI Protocol unless it has conferred with other affected Parties. Each Party has identified an e-discovery liaison who is and will be knowledgeable about and responsible for discussing matters related to its ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The Parties will rely on the e-discovery liaisons, as needed, to meet and confer about matters involving ESI and to help resolve disputes without court intervention. Any attorney representing a Party in the case, including the e-discovery liaison, may participate in meet-and-confer conferences, and it is not required that the e-discovery liaison be present for the Parties to meet and confer about matters involving ESI.

E.   The Parties will endeavor in good faith to assure reasonableness and proportionality in ESI-related discovery, and, in so doing, will consider the factors set forth in Federal Rule of Civil Procedure 26(b)(2)(C).

F.   Nothing in this Agreement shall affect, in any way, a producing party's right to seek reimbursement for costs associated with collection, review, and/or production of documents. The Parties shall meet and confer regarding cost sharing or

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

1   cost shifting for the collection, review, and production of documents from sources that

2   the Party identifies as not reasonably accessible because of undue burden or cost.

3   G.   Nothing in this Agreement shall affect, in any way, a producing party's

4   ability to determine its best course of action for identifying documents, including but

5   not limited to, the use of search terms, clustering, and predictive analysis.

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7   IT IS SO ORDERED.

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10   Dated: 11/21/14

    Victor B. Kenton
    United States Magistrate Judge

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

Appendix 1

Fields and Metadata To Be Produced

Field	Data Type	Paper	Loose Native Files & Attachments	Email
BegDoc	TEXT	Start Bates	Start Bates	Start Bates
EndDoc	TEXT	End Bates	End Bates	End Bates
BegAttach	TEXT	Starting bates number of document family	Starting bates number of document family	Starting bates number of document family
EndAttach	TEXT	Ending bates number of document family	Ending bates number of document family	Ending bates number of document family
Custodian	TEXT – separate entries with ","	All custodians of the document	All custodians of the document even if de-duplicated prior to production	All custodians of the document even if de-duplicated prior to production
Folder	Text		File path where original file was collected from	Folder where email was collected from. Includes folder locations within email container files such as PST and NSF
From	Text			Sender of message
To	TEXT – separate entries with ","			Recipients of message
CC	TEXT – separat			Copied recipients

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

	e entries with ","			
BCC	TEXT – separate entries with ","			Blind copied recipients
Subject	TEXT or MEMO if over 255 characters			Subject of message
DateSent	Date (dd-mmm-yyyy) – eg 03-Mar-2012			Date message sent
Time Sent	Text (hh:mm:ss)			Time message sent
Date Received	Date (dd-mmm-yyyy) – eg 03-Mar-2012			Date message received
Time Recv	TEXT (hh:mm:ss)			Time message received
File Name	Text (hh:mm:ss)		Name of original file	Name of original file

File Extension	Text		Extension of original file	Extension of original file
DateCreated	Date (dd-mmm-yyyy) – eg 03-Mar-2012		Date file was created	
DateModified	Date (dd-mmm-yyyy) – eg 03-Mar-2012		Date file was last modified	
Title	TEXT or MEMO if over 255 characters		Title from document metadata	
Author	Text		Document author from metadata	
Company	Text		Document company or organization from metadata	
Hash	Text		MD5 or SHA-1 Hash Value	MD5 or SHA-1 Hash Value
Text Files	Txt files should be named the same as the beg doc and deliver	Txt files should be named the same as the beg doc and delivered in the same folder as the images (eg, ABC0000001.txt)		

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN

	ed in the same folder as the images (eg, ABC00 00001.t xt)			
Native Files	Native files should be named the same as the beg doc and deliver ed in the same folder as the images (eg, ABC00 00001. xls)			

2:14-CV-03053-MWF (VBKx)
PROPOSED ESI DISCOVERY PLAN